No. 294

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IN THE

Supreme Court of the United States

October Term, 1948

Rec 292

ALBERT J. DEEB,

Petitioner,

—against—

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI ON BEHALF OF PETITIONER ALBERT J. DEEB, TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

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New York City, N. Y.

MORRIS SIEGEL,
With him on the Petition.

INDEX

PAGE

Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Second Circuit.... 1

Opinions Below 2

Jurisdiction 2

Summary Statement of the Matter Involved..... 2

Conclusion 6

Certificate of Counsel 6

AUTHORITIES CITED:

Sec. 301 of Second War Powers Act, 50 U. S. C. A. Appendix, Sec. 633 1

18 U. S. C. A. Sec. 88 2

Emergency Price Control Act of 1942, 50 U. S. C. A. Appendix, sec. 901 et seq. 2

Section 240(a) of Judicial Code, as amended by Act of February 13, 1925 (43 Stat. 938, 28 U. S. C., Sec. 347a) and as modified, pursuant to Act of March 8, 1934 (18 U. S. C., Sec. 688) 2

Rule XI of Rules of Practice and Procedure..... 2

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TO THE HONORABLE THE CHIEF JUSTICE OF THE SUPREME COURT OF THE UNITED STATES OF AMERICA AND THE HONORABLE ASSOCIATE JUSTICES THEREOF:

Your petitioner, Albert J. Deeb, respectfully submits this petition for a writ of certiorari directed to the Circuit Court of Appeals for the Second Circuit, to review the decision and judgment of the United States Circuit Court of Appeals for the Second Circuit in the above cause, affirming as to him a judgment of conviction in the District Court of the United States for the Southern District of New York, wherein the petitioner was convicted under Sec. 301 of the Second War Powers Act, 50 U. S. C. A. Appendix, Sec. 633, of unlawfully extending preference ratings in the purchase of textiles and of illegally diverting

the textiles so procured, and, under 18 U. S. C. A. Sec. 88, of having conspired to violate the Emergency Price Control Act of 1942, 50 U. S. C. A. Appendix, Sec. 901 *et seq.*, by selling finished piece goods at prices in excess of the ceilings established by law.

The judgment of the Circuit Court of Appeals affirming the conviction of the petitioner was entered on August 23rd, 1948 (R. 1054).

Opinions Below

The District Court rendered no opinion. A majority opinion and a dissenting opinion, not yet officially reported, were rendered by the United States Circuit Court of Appeals, Second Circuit (R. 1038).

Jurisdiction

The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code, as amended by the Act of February 13, 1925 (43 Stat. 938, 28 U. S. C., Sec. 347a), and as modified, pursuant to the Act of March 8, 1934 (18 U. S. C., Sec. 688), by Rule XI of the Rules of Practice and Procedure after verdict in criminal cases (292 U. S. 661, 666).

Summary Statement of the Matter Involved

The Petitioner, Albert J. Deed, has been convicted on five counts of each of the two informations pertaining to the unlawful extension of preference ratings and the unlawful use of materials obtained by the said extension of such preference ratings and on the indictment for conspiracy to violate the Emergency Price Control Act of

1942 and the maximum price regulations under the said statute, in having conspired to sell finished piece goods at prices in excess of the maximum prices established therefor.

The two informations and the indictment were consolidated for the trial over objection. The defendants were tried before the Court and Jury and the Petitioner Albert J. Deeb was convicted on five of the forty-one counts of each information and on the indictment, and was fined a total sum of $20,000 and sentenced to imprisonment for a year and a day.

All of the defendants appealed from the judgments of conviction in the District Court to the United States Circuit Court of Appeals for the Second Circuit. On August 23rd, 1948, the United States Circuit Court of Appeals affirmed the judgment of conviction in all respects as to the Petitioner Deeb and affirmed in part and reversed in part the judgment of conviction as to the defendant-appellant George Smith.

During the trial in the District Court, a very serious question as to immunity presented itself with respect to the defendant Smith, which resulted from an examination before an official of the Office of Price Administration. The entire question of immunity has been covered in the Petition of the defendant-appellant Smith and for that reason, your Petitioner will not elaborate upon the same except to state that the issues of immunity played an extremely important part on the trial in the District Court affecting the interests of your Petitioner.

Exhibit 147A pertaining to the examination of the defendant Smith before the O. P. A. was excluded as to your Petitioner but nevertheless read to the Jury. As a matter of fact, this exhibit was referred to by the District Attorney on summation to the Jury for the purpose of using

the same to influence the decision of the Jury. The Government's summation on page 953 of the record is as follows:

> "If there be any question about the fact that there was knowledge on the part of Daisart and all those involved in this case with regard to the limitation upon the basis of sales we have only to turn to 147A."

Your Petitioner contends that this reference to the said Exhibit was highly prejudicial as to him and certainly created certain inferences in the minds of the Jury leading to his conviction.

Exhibit 158, a summary of the testimony of certain witnesses and exhibits was introduced into evidence by the Government over objection (R. 742, 743), and had the effect of virtually summarizing the entire case to the Jury. This exhibit showed the source of supply of the materials obtained through the extension of the priority ratings and the final disposition of the same. It was used primarily for the purpose of indicating to the Jury that the defendants were guilty of the informations and the indictment. As a matter of fact, the Jury during its deliberations requested the said exhibit.

Your Petitioner raises the question to this Court that since he was tried jointly with the defendant Smith, that had immunity been granted to Smith at the outset of the trial or at any time during the trial, the decision of the Jury as to him might never have come to pass. It is possible, that had your Petitioner been tried alone that he may not have been convicted of the crimes charged. Your Petitioner believes that in the interest of justice that his conviction should not be permitted to stand if the defendant Smith was entitled to immunity on all of the testimony

given upon the trial against him. It is respectfully submitted that the fact that these defendants were tried together and that the evidence against one defendant tended to influence the position of the other is of vital importance in the case. It would have required very delicate surgery of the evidence so that facts brought out as to one defendant would in no way affect the rights of the other.

The majority opinion of the Circuit Court held that the defendant Smith gained no immunity on the indictment. L. Hand, Circuit Judge, in a dissenting opinion indicated that the conviction under the indictment as to Smith should have been reversed on the ground that the immunity was sufficiently broad to cover the testimony that led to his conviction. Your Petitioner was mentioned as one of the conspirators with the defendant Smith and they were both indicted and tried together. Your Petitioner urges that if the indictment had been dismissed as to Smith by reason of the immunity claimed by him, the indictment should have been dismissed as to the defendant Deeb or in the alternative, the trial should have been severed so that he could have been tried individually. Had this been done, there is every reason to believe that the evidence presented would have resulted in a verdict of acquittal. Exhibit 158 had the effect of intertwining the interests of the defendant Deeb with that of the defendant Smith, all of which was highly prejudicial and tended to affect his substantial rights upon the trial of this case.

CONCLUSION

WHEREFORE, it is respectfully submitted that this petition for a writ of certiorari directed to the United States Circuit Court of Appeals for the Second Circuit, be granted to review the decision and judgment of the Circuit Court of Appeals for the Second Circuit.

Dated: September 16, 1948.

Respectfully submitted,

ALBERT J. DEEB
Petitioner

BY FRED H. REES
Attorney for Petitioner.

MORRIS SIEGEL,
With him on the Petition.

Certificate of Counsel

I hereby certify that in my judgment the foregoing petition is well founded and that it is not interposed for delay.

FRED H. REES
Attorney for Petitioner, and a member of the Bar of this Court.